

Taylor IV, William - BALTO

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From: Sutherland, Kathy L. - BALTO on behalf of Smith, Jay - BALTO  
Sent: Monday, November 12, 2001 11:41 AM  
To: 'thomas.geiser@wellpoint.com'; 'g\_horowitz@stblaw.com'; 'robert.kelly@wellpoint.com'  
Cc: 'david.wolf@carefirst.com'; 'john.picciotto@carefirst.com'; 'stuart.smith@csfb.com'; Taylor IV, William - BALTO  
Subject: FROM JAY SMITH -- Please see attached memorandum.



Memorandum



MEMORANDUM

To: Thomas C. Geiser  
Gary Horowitz  
Robert Kelly  
cc: David D. Wolf  
John A. Picciotto  
Stuart F. Smith  
William Taylor, IV  
From: R. W. Smith, Jr.  
Date: November 12, 2001  
Subject: Merger Agreement

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To follow up points relating to the draft merger agreement that we sent to you on Friday afternoon. First, we did intend to include a modification to the definition of Purchaser Material Adverse Effect to incorporate a bifurcated definition. The existing definition would apply as of the date of signing of the agreement; we would add a new definition consistent with the closing condition in Section 7.2(g) which would be applicable after the signing of the agreement.

Secondly, on the tax insurance issue, we have considered it further over the weekend and would propose the following. The existing language concerning going out and trying to get the insurance would stay in place. Pacific would commit to pay for insurance but there would be a condition to closing added indicating that if the cost were greater than \$5 million, Pacific would have no obligation to close. Correspondingly, CareFirst would not have any obligation to close if the insurance was not available or obtained. We are not in a position to agree to any structure that would suggest a decline in the \$1.3 billion purchase price.

I hope this is helpful.

RWS/kl

OCC 009887